

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EARLE S. HOWARD,

Plaintiff,

UNKNOWN,

Defendant.

No. 2:23-cv-1033 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. §1983. Before the court are plaintiff's motion to proceed in forma pauperis and plaintiff's complaint for screening. For the reasons set forth below, this court grants plaintiff's motion to proceed in forma pauperis and finds plaintiff fails to state any cognizable claims for relief. Plaintiff will be given an opportunity to file an amended complaint.

IN FORMA PAUPERIS

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. §1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and

forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §1915(b)(2).

SCREENING

I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

However, in order to survive dismissal for failure to state a claim a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.

1 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
2 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

3 The Civil Rights Act under which this action was filed provides as follows:

4 Every person who, under color of [state law] . . . subjects, or causes
5 to be subjected, any citizen of the United States . . . to the deprivation
6 of any rights, privileges, or immunities secured by the Constitution .
7 . . shall be liable to the party injured in an action at law, suit in equity,
8 or other proper proceeding for redress.

9 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
10 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
11 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A
12 person 'subjects' another to the deprivation of a constitutional right, within the meaning of §1983,
13 if he does an affirmative act, participates in another's affirmative acts or omits to perform an act
14 which he is legally required to do that causes the deprivation of which complaint is made."
15 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 **II. Analysis**

15 **A. Allegations of the Complaint**

16 Plaintiff is an inmate at the California Health Care Facility ("CHCF"). While he states that
17 the basis for his complaint occurred in Riverside County, his claims identify conduct that
18 happened just days before he filed the complaint. Therefore, as best this court can discern,
19 plaintiff is complaining of conduct that occurred at CHCF.

20 Plaintiff does not identify any defendants. Plaintiff's first claim appears to be that another
21 inmate was supposed to repair plaintiff's television but failed to fix it. In his second and third
22 claims, plaintiff alleges that an unidentified person or persons shined flashlights into his cell,
23 walked by his cell repeatedly, and slammed doors which has interfered with plaintiff's sleep and
24 invaded his privacy.

25 For relief, plaintiff states that he wants help getting emergency public assistance, getting food
26 stamps, and having his social security benefits reinstated.

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B. Does Plaintiff State Cognizable Claims?

Plaintiff fails to state any claims for relief under §1983 for many reasons. First, plaintiff must identify by name the person or persons that he alleges have caused him harm. Second, plaintiff may only name as defendants people who are employed by the government or are otherwise “acting under color of state law.” Other prison inmates are not appropriate defendants in a §1983 case. Therefore, plaintiff’s complaint that an inmate failed to fix his television should not be raised in this case unless plaintiff is also alleging a constitutional violation by someone acting for the government. Third, for the reasons described below, none of plaintiff’s other allegations rise to the level of a constitutional violation.

Plaintiff is advised that he must adhere to the following standards for stating claims for relief under § 1983:

- Plaintiff must clearly identify each defendant by name and describe just what that defendant did that violated his constitutional rights.
- Plaintiff must identify as a defendant only persons who personally participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another’s act or omits to perform an act he is legally required to do that causes the alleged deprivation). “Vague and conclusory allegations of official participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).
- The following people are typically not appropriate defendants in a § 1983 action: (1) supervisory personnel, see Faye v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979) (supervisors not liable for the actions of their employees under § 1983; respondeat superior is not a basis for liability); and (2) persons whose only role was reviewing plaintiff’s administrative appeals, see George v. Smith, 507 F.3d 605, 609 (7th Cir. 2007) (Generally, denying a prisoner’s administrative appeal does not cause or contribute to the underlying violation.).

- 1 • Plaintiff must make a short, plain statement of the facts supporting each claim. See
2 Fed. R. Civ. P. 8(a).
- 3 • Plaintiff may allege multiple claims against a single defendant. Fed. R. Civ. P. 18(a).
4 However, he may not bring a claim against one defendant in the same case as an
5 unrelated claim against another defendant. Unrelated claims against different
6 defendants belong in different suits.” George v. Smith, 507 F.3d 605, 607 (7th Cir.
7 2007) (citing 28 U.S.C. § 1915(g)). Simply alleging a “conspiracy” does not
8 transform unrelated claims into related claims.

9 With respect to the legal standards for plaintiff’s apparent claims, if plaintiff is attempting to
10 allege that the conditions of his confinement violate his constitutional rights then he must show
11 that the prison official knew that plaintiff “face[d] a substantial risk of serious harm” and the
12 official “disregard[ed] that risk by failing to take reasonable measures to abate it.” Farmer v.
13 Brennan, 511 U.S. 825, 847 (1994). If a prison official makes unnecessarily excessive noise, it
14 might amount to an Eighth Amendment violation. Inmates have a general right to be “housed in
15 an environment that ... is at least reasonably free of excess noise.” Keenan v. Hall, 83 F.3d 1083,
16 1090 (9th Cir. 1996). But for excessive noise to be cognizable under the Eighth Amendment, “it
17 ‘must either significantly exceed, or be independent of, the inherent discomforts of
18 confinement.’” Endsley v. Luna, 750 F. Supp. 2d 1074, 1100 (C.D. Cal. 2010) (quoting Demery
19 v. Arpaio, 378 F.3d 1020, 1030 (9th Cir. 2004)); see Toussaint v. McCarthy, 597 F. Supp. 1388,
20 1409 (N.D. Cal. 1984) (excessive noise claim requires “constant exposure” that “inflicts pain
21 without penological justification”). Similarly, excessive lighting may be a cognizable claim. See
22 Keenan, 83 F.3d at 1090. But, plaintiff must show that the defendants made the noise or shined
23 the lights without a legitimate penological justification and knowing it could cause plaintiff
24 serious harm.

25 Finally, the relief plaintiff seeks is not related to his claims. Obtaining public assistance has
26 nothing to do with plaintiff’s claims regarding interference with his sleep and invasion of his
27 privacy. By its terms, §1983 permits plaintiff to seek “redress” for violations of his rights.
28 “Redress” means compensation for the wrongs plaintiff claims to have suffered. See

1 <https://www.merriam-webster.com/dictionary/redress>. Plaintiff may only seek relief that would
2 compensate him for the wrongs he alleges in the complaint.

3 **C. Conclusion**

4 This court finds plaintiff fails to state any claims for relief cognizable under 42 U.S.C.
5 §1983. The complaint will be dismissed. Plaintiff will be given the opportunity to file an
6 amended complaint.

7 In an amended complaint, plaintiff must address the problems with his complaint that are
8 explained above. Plaintiff is advised that in an amended complaint he must clearly identify each
9 defendant and the action that defendant took that violated plaintiff's constitutional rights. The
10 court is not required to review exhibits or other filings to determine what plaintiff's charging
11 allegations are as to each named defendant. Plaintiff must include ALL claims he wishes to
12 pursue in one amended complaint. In the present order, as a one-time courtesy to plaintiff, this
13 court has reviewed all of plaintiff's filings to attempt to determine his claims. The court is not
14 required to do so and this court will only consider the amended complaint next time.

15 Plaintiff must identify as a defendant only persons who personally participated in a
16 substantial way in depriving plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d
17 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if
18 he does an act, participates in another's act or omits to perform an act he is legally required to do
19 that causes the alleged deprivation). "Vague and conclusory allegations of official participation
20 in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir.
21 1982) (citations omitted).

22 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R.
23 Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R.
24 Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
25 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

26 Plaintiff may not bring claims against different defendants that are not related to each other.
27 Fed. R. Civ. P. 20(a)(2). "[M]ultiple claims against a single party are fine, but Claim A against
28 Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims

1 against different defendants belong in different suits.” George v. Smith, 507 F.3d 605, 607 (7th
2 Cir. 2007) (citing 28 U.S.C. § 1915(g)). Simply alleging a “conspiracy” does not transform
3 unrelated claims into related claims.

4 The federal rules require a simple description of a party’s claims. Plaintiff’s claims must be
5 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema
6 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,
7 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8.

8 An amended complaint must be complete in itself without reference to any prior pleading.
9 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.

10 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has
11 evidentiary support for his allegations, and for violation of this rule the court may impose
12 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

13 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED as
14 follows:

15 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.

16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is
17 assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1).
18 All fees shall be collected and paid in accordance with this court’s order to the Director of the
19 California Department of Corrections and Rehabilitation filed concurrently herewith.

20 3. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend.

21 4. Plaintiff is granted sixty days from the date of service of this order to file an amended
22 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
23 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
24 assigned this case and must be labeled “First Amended Complaint;” failure to file an amended
25 complaint in accordance with this order may result in a recommendation that this action be
26 dismissed.

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1 5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form
2 used in this district.

3 Dated: January 4, 2024

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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